



Docket: LR22065

Order: LR22-62

IN THE MATTER of an appeal, under section 25 of the *Rental of Residential Property Act (the "Act")*, filed by Rob Brown and Hayley Cormier against Order LD22-337 issued by the Director of Residential Rental Property and dated September 22, 2022.

BEFORE THE COMMISSION ON Tuesday, November 1, 2022

Panel Chair - Erin T. Mitchell, Commissioner
M. Douglas Clow, Vice-Chair

Hearing Date: Wednesday, October 26, 2022

ORDER

Compared and Certified a True
Copy

(Sgd.) Susan Jefferson

Commission Administrator
Corporate Services and Appeals

This appeal asks the Commission to determine whether the Director of Residential Rental Property (the “Director”) erred in finding that an eviction notice was valid.

BACKGROUND

Rob Brown and Hayley Cormier (the “Tenants”) rent premises located at 279 Fitzroy Street, Apartment #4, Summerside, PE (the “Premises”), from 102675 PEI Inc. (the “Landlord”).

On August 25, 2022, a representative of the Landlord served a Notice of Termination by Lessor of Rental Agreement (“Form 4”) on the Tenants citing breaches of clauses 14(1)(a), 14(1)(b) and 14(1)(e) of the *Act*. The effective date of the Form 4 was September 26, 2022.

On September 9, 2022, the Landlord filed with the Director an Application by Lessor for Earlier Termination (“Form 5”) seeking to terminate the rental agreement effective September 15, 2022.

In Order LD22-337 dated September 22, 2022, the Director ordered that the Form 4 was valid and that Tenants vacate the Premises by 11:59 p.m. on September 26, 2022.

The Tenants appealed the Order.

The Commission heard the appeal on October 26, 2022. The Tenant Rob Brown (“Mr. Brown”) participated by way of telephone conference call. The Landlord was represented by Acel O’Connor, George Villaluz and Abhi Matthews (“Mr. Matthews”). Richard Clements (“Mr. Clements”) and Lacey Lynn Arsenault (“Ms. Arsenault”) testified on behalf of the Landlord.

Disposition

The appeal is dismissed and Director’s Order LD22-337 is confirmed.

The Issue

Did the Director correctly determine that the Form 4 dated August 25, 2022 was valid?

Analysis

The Landlord seeks to evict Mr. Brown due to his alleged smoking in the building.

The Landlord contends that the building is a non-smoking building and Mr. Brown does not dispute this. Mr. Brown acknowledges smoking in the Premises, and acknowledges receiving a no smoking policy notice in April 2022. He maintains that he stopped smoking in the Premises three weeks ago.

Mr. Brown testified that there are others in the building who also smoke and who aren’t being evicted. Mr. Matthews testified that he is not aware of others smoking in the building, and if there are others, they will also be evicted.

Mr. Brown did not file a Form 6 application to set aside the August 25, 2022 Form 4. The requirement to file a set aside application and the deadlines and procedure is set out in section 16 of the Act. By not filing the Form 6 set aside application, Mr. Brown is deemed to have agreed with the provisions of the Form 4 which provided for a termination date of September 26, 2022. The Landlord also filed a Form 5 seeking a termination of the rental agreement on September 15, 2022. In Order LD22-337, the Director found that an earlier termination was warranted; however, the Director found that the termination date should remain September 26, 2022 given the date of the hearing.

As Mr. Brown did not file a set aside as required under section 16 of the Act, the Commission confirms the outcome of Director's Order LD22-337 and the appeal is dismissed.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Rental of Residential Property Act*,

IT IS ORDERED THAT

1. **The appeal is dismissed.**
2. **Director's Order LD22-337 is confirmed.**

DATED at Charlottetown, Prince Edward Island, Tuesday, November 1, 2022.

BY THE COMMISSION:

(sgd. Erin T. Mitchell)

Panel Chair - Erin T. Mitchell, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

NOTICE

Subsections 26(2), 26(3), 26(4) and 26(5) of the *Rental of Residential Property Act* provides as follows:

26. (2) A lessor or lessee may, within fifteen days of the decision of the Commission, appeal to the court on a question of law only.
- (3) The rules of court governing appeals apply to an appeal under subsection (2).
- (4) Where the Commission has confirmed, reversed, or varied an order of the Director and no appeal has been taken within the time specified in subsection (2), the lessor or lessee may file the order in the court.
- (5) Where an order is filed pursuant to subsection (4), it may be enforced as if it were an order of the court.